SUBMISSIONS TO THE ONTARIO COMMITTEE ON TAXATION BY THE TAXATION SUBSECTION OF THE ONTARIO BAR ASSOCIATION

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We welcome the opportunity to appear before this Committee in order to present these submissions. We appreciate the very difficult task which the Committee has before it and to that end we hope that our submissions will be of assistance.

It is not the intention of this brief to make a detailed critical analysis of all Provincial Revenue legislation; but with the hope of lending some additional emphasis to the aspects chosen for comment, these submissions will deal firstly with some generalizations and secondly specific legislation.

GENERAL

APPEALS:

It is a fundamental principle of taxation legislation that it should be as clear, concise and exact as possible, that there be no room for arbitrary conclusions, and that there be, both in theory and in practice, a readily available means for the taxpayer to obtain a fair and judicial decision on such disputes as may arise. Such principle has been patently neglected in much of the taxation legislation on the books of this province. Such statutes as THE LAND TRANSFER TAX ACT, THE SECURITY TRANSFER TAX ACT and THE MOTOR VEHICLE FUEL TAX ACT contain no appeal provisions whatsoever. In other cases such right of access to unbiased interpretation is vague, impractical or completely illusory. The appeal procedures under THE CORPORATIONS TAX ACT and THE RETAIL SALES TAX ACT provide no time limits on the Treasurer to confirm, vary or reassess following the receipt of notice of objection or to deliver a reply following a notice of appeal. As a result the determination of the appeal may be delayed indefinitely. THE RETAILS SALES TAX ACT requires within sixty days of institution of appeal, payment into court of

security for costs up to Four Hundred Dollars at the request of the Treasurer. Relative to the tax involved, in many cases such payment is unduly onerous. Under THE MINING TAX ACT the appeal both with respect to Mining Tax and tax on the production of natural gas is either to the Mining Commissioner or to the Ontario Municipal Board in the discretion of the Minister. Neither tribunal has the jurisdiction to decide questions of law. No appeal procedure is laid down after the giving of notice of appeal. In the case of Mining Tax the scope of the appeal tribunal's power to amend or vary the assessment or refer the matter back to the Mine Assessor for re-assessment is not set out. Under THE SUCCESSION DUTY ACT the cumbersome appeal provisions make such procedure so expensive to the taxpayer that appeals involving very substantial amounts only can be considered on any practical basis. This is particularly true with respect to valuation problems.

It is characteristic of many situations arising under taxation statutes that only small amounts of tax are involved. A practical right to appeal must therefore of necessity be economical with respect to both money and time. Keeping in mind the possible jurisdictional difficulty to be surmounted it is suggested that a special tax court might be constituted to hear appeals from Ontario taxing statutes. Such a tax court might appropriately be established by way of amendment to The Proceedings Against the Crown Act. The appeal tribunal of first instance could perhaps be a County Court Judge sitting in a specially designated court wherein taxpayers may appear without counsel, or by agent, where it is not necessary for counsel to gown but where reasonable courtroom decorum is mandatory. It is proposed that there be no provision for costs in the first instance and that there should be only a minimum filing fee. As far as possible the appeal provisions of various statutes should be uniform. As is the case of appeals under the Income Tax Act of Canada a taxpayer should have

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the right to by-pass such a special tax court if he so desires by proceeding directly to the Supreme Court of Ontario.

Appeals from the court of first instance should perhaps be to a single judge of the Court of Appeal and thereafter to the Supreme Court of Canada but only with leave or where the tax involved is in excess of a stated sum. Provision should be made for the filing of an agreed statement of facts. An appeal from the court of first instance should be an appeal in the true sense and not in fact a trial de novo.

Certainly the details of the appeal procedure are of utmost importance; however, the purpose of this submission is not primarily to set out such procedure but to submit with all possible emphasis the fact that some procedure practical in application and general in adoption must be provided if justice and equity are to prevail.

RETURNS:

A second submission of general application involves a comparison of the total amount of revenue derived by the Province to the total expense of administration of any particular statute together with the financial burden placed on the taxpayer due to the necessity of gathering together the information necessary to correctly arrive at the computation required and to complete the necessary forms. There is little doubt for instance that the total liability carried by the Department in administrative and collection expenses and by the taxpayer in gathering and filing the necessary information to comply with THE SECURITY TRANSFER TAX ACT as it applies to shares of many corporations far outweighs the revenue derived by the Province from such tax. It is therefore suggested that at least as they may apply to private companies or companies with small capitalization that serious consideration be given to abolishing the Capital Tax, Place of Business Tax and

Security Transfer Tax and that a single provincial return be developed to cover annual information returns and corporation tax returns. The latter part of the return dealing with corporation taxes to be retained by the Department as confidential. In order to adequately assure no loss of revenue an appropriate annual charge could be payable by all such corporations in lieu of complicated calculation. If failure to pay resulted in cancellation of charters many related problems other than directly in the area of revenue would be substantially reduced as well.

LIENS:

A third matter which might be termed a general submission is the practice of incorporating into provincial tax legislation a provision for a lien for the amount of tax payable on the real or personal property of the taxpayer which is an effective prior charge on such property without the formality of registration of any notice whatsoever. Such provisions are found in THE CORPORATIONS TAX ACT, THE LOGGING TAX ACT, THE MOTOR VEHICLE FUEL TAX ACT and THE MINING TAX ACT. The statutes contain no provision for the waiver of such liens and no effective way for a bona fide purchaser to ascertain if a lien exists. It is not uncommon pursuant to inquiry to receive the reply from the appropriate Department that it cannot ascertain if there is a current claim for liens. On the other hand even written assurance that there is no lien does not estop the Crown. It is submitted that at least in such cases as THE MOTOR VEHICLE FUEL TAX ACT where there is provision for the posting of a bond such provision for lien may be completely abolished. In other cases, in the interest of facilitating the already overly complicated economic functions of our society, provisions should be made for the necessity of registration of notice of such lien

before it becomes valid as against a purchaser in good faith for value without notice.

SUBMISSIONS CONCERNING PARTICULAR TAXING STATUTES

ASSESSMENT ACT
R.S.O. 1960, Ch. 23 as amended

In the first part of this submission, among other things, we dealt in general with the advisability of having, in so far as possible, a uniform system of appeals from all taxing statutes. There are certain special problems concerning appeals in the Assessment Act. In this connection while the Courts of Revision have often been criticized for being too prone to adopt the view of the assessor we believe that Courts of Revision should be retained as informal and inexpensive tribunals to which assessment appeals may be taken in the first instance.

The Assessment Act at the present time provides that a person assessed may appeal his assessment to the Court of Revision, thence to a County or District Court Judge, thence to the Ontario Municipal Board and thence to the Court of Appeal for Ontario. The hearings before the Court or District Court Judge and before the Ontario Municipal Board are both in the nature of trials de novo. There are too many steps in this appellate procedure, and these successive appeals result in delay and expense. We accordingly suggest that the Assessment Act be amended to eliminate the right of appeal (which is in the nature of a trial de novo) to the Ontario Municipal Board and to provide for an appeal directly from the County or District Court Judge to the Court of Appeal in cases where an appeal may now be taken from the Ontario Municipal Board

to the Court of Appeal.

The provisions giving the right of appeal to the Ontario Municipal Board would be justified if an attempt were being made to provide for uniform assessments throughout the Province, but, to our knowledge, no such attempt is really being made at the present time. We might mention that in our view such uniformity throughout the Province, though perhaps desirable, is not really necessary so long as there is uniformity throughout a given municipality or county as the case may be. If it is felt that there should be uniformity of assessment throughout the Province we believe that the present Assessment Act should be repealed and replaced by an entirely new statute.

The disposition of appeals on matters of municipal taxation is strictly a judicial function. The Ontario Municipal Board has many functions, and its duties are not primarily judicial in nature. In addition, it is incongruous that an appeal may lie from a District or County Court Judge, who is, of course, a Judge appointed under Section 96 of the British North America Act, to a provincial board.

We are greatly concerned about the practice followed by some assessors of ignoring decisions of the appellate tribunals established under the Assessment Act and re-imposing assessments which have been overturned by such appellate tribunals for a previous year. This practice is of course injurious and costly to the municipal taxpayer involved. We accordingly believe that specific provisions should be inserted in the Assessment Act in an attempt to halt the practice. At the same time, we realize that it must always remain open to the assessor, in proper cases, to correct previous errors or to vary an assessment if there has been a true change of circumstances.

We accordingly suggest that the Assessment Act might be amended to add the following provisions:

1. If an assessment has been determined by a Court of Revision, a County or District Judge, the Ontario Municipal Board, or the Court of Appeal for Ontario, and within three years from the date of such decision an assessor or Assessment Commissioner proposes to alter such assessment, he should be required to deliver with the notice of assessment a written notice addressed to the person assessed stating his reasons for making such new assessment.

2. If the person assessed appeals against such an assessment made within the three year period, the burden should be placed upon the assessor to convince the Court of Revision or other appellate tribunal that the assessment made by him should be maintained.

3. If the County or District Court Judge or other appellate tribunal (other than the Court of Revision) finds in favour of the person assessed, such tribunal should have the right to award party and party costs on the County Court Scale to the person assessed. We feel that no award of costs should be made in the Court of Revision.

CORPORATIONS TAX ACT
R.S.O. 1960, Ch. 73 as amended

In order to avoid duplication of administration and to simplify matters for taxpayers and reduce their costs, it is desirable to have maximum uniformity with the federal income tax legislation. The ideal solution would be to have the Ontario tax assessed, settled and collected by the federal government and remitted to the Province under an agreement which would provide for

utilization of the federal appeal machinery.

If such a solution is not feasible it is suggested that the Ontario legislation be amended so that it conforms with the following principles:

1. Uniformity so far as possible with the applicable provisions of the Income Tax Act of Canada. For example, at the present time:
   (a) there is no limitation in time on the right of the Treasurer to reassess or make additional assessments. Under the Canadian Act the Minister may only reassess or make additional assessments within four years of an original assessment in the absence of fraud or misrepresentation on the part of the taxpayer;
   (b) the appeal procedure in the Ontario Act does not impose any effective time limit on the Treasurer to confirm, vary or reassess following the receipt of notice of objection or to deliver a reply following a notice of appeal. As a result the Treasurer is in a position to delay the progress of litigation at the expense of the taxpayer;
   (c) there is no provision in the Ontario Act for determining whether a solicitor-client privilege exists as there is in section 126A of the Canadian Act;
   (d) the provisions of treaties and conventions entered into by the Canadian Government do not extend to the calculation of Ontario tax liability.
2. The utilization of the Canadian Tax Appeal Board in dealing with assessments of Ontario tax. While this may present a constitutional problem it is felt that

this could be overcome with a resulting reduction of costs, both to the taxpayer and the Ontario Government.

3. Uniformity of the rules for the allocation of income in the Canadian, Ontario and Quebec legislation so that Ontario taxpayers will not be at a disadvantage in relation to taxpayers in other parts of Canada. This will require the attention and co-operation of the authorities in all three jurisdictions.

4. The removal of the lien for corporation tax or substantial amendment to the provisions relating to such lien. Tax liens such as the lien provided for in section 91 have been previously referred to. Section 91 provides that amounts payable under the Act are a first lien upon the property of the corporation liable to pay such amounts. The existence of this lien has caused difficulty in practice to persons acquiring property from a corporation or shares of a corporation due to the fact that a department has delayed in advising or refused to advise whether or not a lien is claimed by the Treasurer. In certain cases a lien is claimed for an unspecified amount. It is suggested that the provision for the lien either be removed entirely from the statute or that provision be made that such a lien will only arise upon registration of a specific claim for a specific amount. It is also noted that there is no corresponding lien provided for in the Canadian legislation.

5. The removal of the capital and place of business tax. Elsewhere in this brief it is suggested that such taxes, along with, in certain

circumstances, the security transfer tax and other taxes of a similar nature, be removed and replaced by one simple, flat annual tax designed to produce the same revenue.

GASOLINE TAX ACT
R.S.O. 1960, Ch. 162

MOTOR VEHICLE FUEL TAX ACT
R.S.O. 1960, Ch. 240 as amended

The first submission with respect to these two statutes is that they should be consolidated. It would simplify procedures if one set of rules is established for filing returns and collecting tax.

As earlier mentioned in the first part hereof no appeal procedure exists as such in these statutes and purchasers and registrants are left without satisfactory means of seeking redress. It is conceivable, for example, that a registrant under the Motor Vehicle Fuel Tax Act might exempt a purchaser and receive a non-exempt ruling from the Comptroller of Revenue. According to section 10 (8) the Comptroller merely sends a Notice of Accounting which must be paid, including interest on this revised amount.

In the first part hereof we dealt in general with the lien which the Crown is given for taxes. In this connection under the Motor Vehicle Fuel Tax Act the dual requirements that a surety bond be furnished by the registrant and the stipulation that tax payable under the Act is a first lien and charge upon the registrant's property in Ontario are unduly onerous and the lien could well be dispensed with.

Subsection 1 (b) of the Motor Vehicle Fuel Tax Act defines fuel and by Regulation 449 certain exemptions are set out. Under Item 9 of the exemptions, the use or intended use by the consumer of the product becomes important in determining whether or not the product is taxable as a fuel under the Act. It is recommended that a registrant who is charged with collection of tax from a purchaser should be entitled to rely on the purchaser's statement as to the use or intended use of the product in determining whether or not tax is collectible. At the moment, the registrant is subject to penalties for failure to collect tax even when to the best knowledge of the registrant the end use of the product at the time of delivery was such as to make the product tax exempt, but that through inadvertence or otherwise the product was eventually used for purposes that would render the same taxable within the meaning of the Act.

In the alternative, tax could be collected in every instance and the exemption provision could be amended to apply to the right of refund only as provided in Section 18 of the Act. However, it would seem that the government is anxious to minimize the processing of refunds and accordingly the vendors' relief from penalty would probably be more practical.

THE LAND TRANSFER TAX ACT
R.S.O. 1960, Ch. 205

1. This statute requires amendment to include a realistic right of appeal to the courts.
2. It ought also to contain a right to obtain an advance ruling upon submission of draft documents, a ruling which would be binding if the transaction is completed upon exactly the

same basis as submitted.

3. There is an ambiguity in the statute which is currently creating certain problems. The difficulty lies in the meaning of the word "land". This word has several meanings legally. For the purpose of this tax it is generally believed to be synonymous with "real property", without some obscure varieties of real property such as rights-of-way. In this meaning it would exclude leasehold property, the assignments of which have not hitherto been taxed but which the Treasury now seeks to tax.

It is suggested that the statute be amended to define "land" as "real property" excluding certain types of real property interests which heretofore have been excluded from tax.

4. The present statutory language permits the passage of Regulations provided these are not inconsistent with the Act itself. No regulations have ever been passed. Instead unofficial and unauthorized "rulings" have been published and the Act has been interpreted in accordance with these wherever the local Registrars of Deeds who collect the tax co-operate. It is submitted that these rulings should be officially withdrawn.

MINING TAX ACT
R.S.O. 1960, Ch. 242

The basic nature of the tax imposed under the Act is not clear. We understand that the Department regards the tax as being, in essence, a royalty rather than an income tax. The Act, however, purports to tax "profits".

The definition of profits is a peculiar one in that the gross profit is related to the value output of ore etc., at the pit's mouth. This gives rise to certain specific difficulties under the Act which should be cured.

A. In the majority of the cases, the Mine Assessor has complete discretion in determining the amount of the gross profit. Subsection (3) of section 3 reads in part as follows:

> "(3) The profit for a taxation year is the difference between,
>
> (a) the amount of the gross receipts from the output of the mine during the taxation year; or
>
> (b) in case the ore, mineral or mineral-bearing substance or a part thereof is not sold but is treated by or for the owner, holder, lessee, tenant, occupier or operator of the mine, the amount of the actual market value of the output at the pit's mouth; or
>
> (c) if there is no means of ascertaining the actual market value of the output at the pit's mouth, the amount at which the mine assessor appraises such output,
>
> and the following expenses, payments, allowances or deductions: . . . ".

The ore, mineral or mineral bearing substance removed from the mine is in most cases subjected to further processing before sale and subparagraph (a) is rarely applicable. Subparagraph (b) is also rarely applicable since there are very few cases where there is any market for ore, mineral or mineral-bearing substance at the pit's mouth. The vast majority of the assessments, therefore, must be made under subparagraph (c) and the Mine Assessor has complete

discretion in appraising the value of the output at the pit's mouth. Through his discretion in determing "profit" the mine assessor is virtually able to dictate the amount of tax.

B. Since the base (i.e. "profits") for the tax is not the usual base for income tax purposes, the deduction to be allowed to an Ontario taxpayer under the Dominion Income Tax Act is restricted. The deduction in respect of the tax paid to a province as mining tax is allowed under section 11 (1) (p) of the Dominion Act and the basis for determining this deduction is set out under Part VII of the Income Tax Regulations. The Dominion assessors take the position that a mining company is only entitled to deduct such proportion of the taxes paid to the province as the income of the taxpayer derived from mining operations (computed in accordance with the provisions of the Income Tax Act) is of his profit determined in accordance with the Ontario Mining Tax Act. Certain deductions which are available under the Dominion Act are not available as deductions under the Ontario Act and for this reason the income base for Dominion tax is usually smaller than the profits base for Ontario tax. The result is that in most cases only a portion of the Ontario tax is deductible. If Ontario mining tax was levied on the same basis as Dominion income tax, the whole of the mining tax would be deductible for Dominion income tax purposes.

While we are informed that Ontario, in practice, allows a full deduction for Ontario mining tax the provisions of Regulation 301 of the Corporations Tax Act are not clear. It is submitted that the taxpayer should be entitled to this deduction and his right to the same should be clearly stated in the Corporations Tax Act. An amendment to the Corporations Tax Act might not be necessary if the mining tax base were brought into line with the provisions

of the Dominion Income Tax Act.

C. Because of the discretion given to the Mine Assessor under section 3 (3) (c) the most important factor in determining the tax is to be found on the form of tax return specified by the Mine Assessor. The Mine Assessor specifies in the return to be made that the "profit" is to be determined under subparagraph 3 (3) (c) by taking the gross profit on the sale of concentrated or refined products and deducting therefrom processing and marketing allowances. Processing allowance is calculated as either 15% of such gross profit or 8% of the capital cost of the processing assets in order to arrive at the value at the pit's mouth. While this may or may not be a fair and consistent basis for imposing the tax, it is submitted that such an important factor in the determination of the tax should be prescribed by the legislature.

General Conclusion:

Confusion arises under the Act because of the failure to specify clearly the nature of the tax. It is submitted that the nature of the tax should be clearly set out as a royalty or a profits tax. If the tax is to be a profits tax, consideration should be given to amending the Act so that profit is determined in accordance with provisions similar to the provisions of the Dominion Income Tax Act. If the profits base is brought into line with the Income Tax Act this would, in addition to curing the major problems mentioned above, have the additional advantages of standardizing procedures and greatly simplifying the filing of returns and the keeping of records.

Specific Comments:

In any event we think that the following specific problems should be considered:

1. Consideration should be given to the amendment of section 3 (3) (c) to prescribe a basis for the ascertainment

of the value of ore at the pit's mouth. The discretion of the Mine Assessor should be removed.

2. Section 3 (3) (k) - The allowance in respect of depreciation is expressed to be of not less than 5% per annum but not more than 15% per annum of the cost or value as determined by the Mine Assessor at the close of the taxation year. Consideration should be given to the removal of the discretion of the Mine Assessor in this provision or in any event to amending the section to make it clear that the Mine Assessor is to make such determination only where cost is not available as a basis.

3. The Act does not appear to permit the use of the accrual basis of computing profits in the computations under section 3 but in practice such basis is used.

4. Consideration should be given to the revision of subsection (4) of section 3. It would certainly appear that many of the expenses covered by this section are legitimate expenses and true costs of removing ore. It is submitted that interest should be a deduction, royalties should be an allowable deduction and certainly some allowances should be given in respect of the cost of the development of the mine prior to the commencement of output.

5. Consideration should be given to the removal of all discretionary power given to the Mine Assessor - subparagraph 3 (3) (1) and subsection 3 (5) are examples.

6. Section 6 subsection (1) provides for the filing of such returns as is required by the Mine Assessor. It is submitted that a standard form should be prescribed under regulations applicable to all taxpayers.

7. If the submission in the first part hereof, as to a uniform system of appeals, is not adopted, consideration should be given to cures for the following defects in the appeal procedure:

(a) The initial appeal is either to the Mining Commissioner or to the Ontario Municipal Board. The decision as to who is to hear the appeal is made by the Minister. In any event it is doubtful whether either the Mining Commissioner or the Ontario Municipal Board can be given the jurisdiction to decide questions of law.

(b) No appeal procedure after the giving of Notice of Appeal has been laid down.

(c) It is not stated whether the power of the appeal tribunal is to amend or vary the assessment in accordance with its decision or refer the matter back to the Mine Assessor for reassessment. It is suggested that the section be amended to provide specifically for the amendment or variance or vacating of the assessment by the appeal tribunal and for the review by it of any discretionary power exercised by the Mine Assessor.

8. It appears that the Minister has an indefinite right to reassess under subsection 10 (2). It is suggested that the limitation similar to the limitation under the Dominion Income Tax Act be imposed and that the Mine Assessor's right to reassess be limited to four years in the absence of fraud.

9. Part II of the Act imposes a royalty tax on production of natural gas and while the basis for the tax appears to be clear, the procedure for returns and appeals under sections 19 and 20 are subject to similar objections to the sections relating to mining tax. Section 19 provides that the return to be filed is to be prescribed by the Mine Assessor and it is submitted that this should be prescribed by regulation of the Lieutenant-Governor in Council. Section 21 provides for an appeal and while the appeal is only as to quantity of production and the power of

the appellant tribunal to fix this is stated, the procedure for the hearing of such appeals is not laid down beyond the giving of notice.

10. As suggested in the first part hereof, it is submitted that the special lien and priority contained in section 29 of the Act should be removed and the Department should be required to register in the appropriate land registry office notice of any lien it may have by reason of unpaid taxes.

RETAIL SALES TAX ACT
Stat. of Ont. 1960-61, Ch. 91 as amended

Definition of "Sale":

Section 1 (11) of the Retail Sales Tax Act contains an exhaustive definition of the word "sale". While this word has a well-understood legal meaning, a number of the expressions used in this subsection to extend its meaning have a vagueness which is undesirable in a taxing statute. One of the principal difficulties arises in connection with casual hiring or "leasing" of personal property. Section 1 (11) (a) treats any "lease or rental" as a sale. While it would, no doubt, be important for the protection of the revenue to treat as taxable transactions the leasing or hiring of personal property on a commercial basis, such as long-term automobile or machinery leases, it is difficult to see why a casual transaction of hire between non-commercial parties should be subjected to the tax, particularly when tax has already been paid by the owner at the time he purchased the chattels. While it is presumed that commercial hiring firms are exempt from retail sales tax at the time they purchase goods for hire, this is not the case with casual hiring. It should

be possible to devise some method whereby only those persons who are in the business of providing goods for hire should be entitled to purchase such goods free of tax and only they should be required to collect tax on the payments which they receive. However, it is difficult to justify an attempt to subject other transactions to double taxation.

Accordingly, it is recommended that the words "or possession" and "lease or rental" be eliminated from paragraph 1 (11) (a) and the word "delivers" be replaced by "sells" in the same clause. This clause would then be wide enough to include all sales, including conditional sales. Paragraph 1 (11) (e) could be amended in order to deal specifically with "hire-purchase" transactions, which should be equated with the conditional sales agreements which will have already been dealt with under section 1 (11) (a). A new provision could then be inserted, dealing specifically with those types of hiring arrangements which are intended to be taxed, excluding casual contracts of hire of goods between persons who are not engaged in the business of hiring. In this event, a specific method should be prescribed by the statute for the computation of the tax on those hiring contracts which are to be subject to the tax. The existing provisions are wholly inadequate in this respect and require an undue degree of administrative discretion in their administration.

Taxation of goods brought into the Province:

We are not at all satisfied with the provisions of section 2 (3) of the Act, dealing with the taxation of goods brought into Ontario. Until arrangements are made with other provinces for the reciprocal enforcement of taxing provisions of this nature, the present provision is virtually unenforceable. However, it creates an unhealthy situation in which honest taxpayers will conscientiously pay their tax in the full knowledge that

many citizens are evading payment. In addition, we believe that it should be possible for arrangements to be made with the Customs Branch of the Department of National Revenue for joint collection of the tax on imported goods.

Definition of "fair value":

The definition of the "fair value" in respect of which tax is levied under Section 2 (1), leaves much to be desired. It is difficult to see why this expression should be given an inclusive, rather than an exhaustive, definition in section 1 (5), since presumably in an arm's length transaction only the items listed in clauses (a), (b) and (c) should be taken into account in computing the tax base. Where the transaction is not at arm's length, provisions similar to those contained in section 17 of the Income Tax Act would be desirable, setting an objective test, subject to appeal, in the event of a dispute as to the fair value. In the present statute, contrary to our tradition of full parliamentary and judicial control over taxation, the Comptroller is given absolute power in section 2 (4) to determine the fair value of property for the purposes of taxation under this Act where he "deems it necessary or advisable". In effect, the Comptroller can determine the rate of tax which is payable on any transaction.

In The King v. Noxzema Chemical Co. Ltd. (1942) S.C.R. 178, the Supreme Court of Canada held that no appeal whatever lies from a decision made under the analogous provisions of section 37 of the Excise Tax Act.

In addition, it is difficult to see why transportation charges paid by the vendor to an independent carrier should not be excluded by statute from the tax base, as they are in practice for the Federal Sales Tax. It seems unreasonable for differentiation to be made between a situation in which the vendor pays such

transportation charges and one in which the purchaser pays them.

Discretionary powers, regulations and rulings:

The discretionary powers conferred upon the Comptroller and the Treasurer under this Act appear to be wholly beyond reasonable justification. We have already referred to the power conferred upon the Comptroller to determine the fair value of property. In addition, however, there are many other provisions which have far-reaching significance. For example, section 5 (38) exempts "machinery and apparatus and parts thereof as defined by the Treasurer, that in his opinion are to be used by the purchaser thereof directly in the process of manufacture or production of tangible personal property for sale." This provision and the similar provision in section 5 (39) dealing with goods consumed in the process of manufacturing, are probably the most important discretionary exempting powers in the Act. If these matters cannot be dealt with specifically in the statute, at the very least regulations approved by the Lieutenant-Governor in Council should be promulgated, clearly defining the area of the exemptions as a matter of law. It is utterly unreasonable that hundreds of thousands of dollars of exemptions in this area should depend merely upon the opinion of the Treasurer.

The following subsections of section 5 also contain provisions for definition by the Treasurer:

Subsections 16, 18, 25, 37, 38, 44, 45, 48, 53, 56, 57, 58 and 59.

It is to be noted that the definition of children's clothing and children's footwear has been left to regulation by the Lieutenant-Governor in Council, an arrangement which is infinitely preferable to leaving it to be defined by the Treasurer, in a manner which does not in fact require him to promulgate any formal definitions and which enables him

to deal with each question as it arises, on an ad hoc basis and on the basis of his own opinion. Finally, it is difficult to see on what basis the Treasurer should be given power to define the exemption for "works of art" which are purchased by museum or art galleries, more than 50% of the revenue of which is provided by public donations and grants by public bodies.

Powers of Exemption:

It is difficult to conceive of any special circumstances which would make it desirable to confer upon the Lieutenant-Governor in Council power to exempt a purchaser from payment of the whole or any part of the retail sales tax, as provided by section 56 of the Act. Taxes are, after all, an involuntary exaction, which no one likes to pay. The morale of taxpayers is not enhanced by the presence of statutory provisions, indicating that the Government may in its discretion exempt persons whom the Legislature has seen fit to subject to the tax.

The regulation-making power conferred in section 39 (1) and (2) of the Act appears to go far beyond the requirements of the situation. Clause (d) permits the Lieutenant-Governor in Council to make regulations "defining any expression used in this Act or the regulations" and clause (f) permits regulations to be made "providing for relaxing the strictness of this Act relative to the incidence or collection of tax hereunder in special circumstances, where, without relaxation, inconvenience or hardship might result, including cases involving the purchase of tangible personal property at bazaars and rummage sales." If it is necessary to exempt from taxation articles bought at bazaars and rummage sales, this should be done specifically, with some provision protecting the revenue against commercial operations for gain, but the remainder of the provisions which have been quoted are entirely contrary to the cardinal principle that only

persons who are clearly subjected to tax by Parliament should be required to pay the tax and that all such persons should pay the tax without distinction.

Payment of Vendors:

Section 99 permits the Treasurer to enter into arrangements with vendors for payment of remuneration for their services. There is no objection to such payment being made in a manner which is prescribed by regulation, but, as the statute is presently drawn, the Treasurer could enter into arrangements on an individual basis with any vendor, providing such vendor with a larger or smaller remuneration than is normally permitted to vendors of that class. Not only is a provision so widely drawn objectionable in principle but it is obvious that it is not required in practice.

Assessment and Appeal Procedure:

It is fundamental to the constitutionality of the Ontario Retail Sales Act that the tax which is imposed should be "direct taxation within the province" as this term is used in the British North America Act. The validity of arrangements in which sales tax is levied directly upon the consumer and the vendor is designated as the agent of the Crown to collect and remit the tax was upheld in Attorney General for British Columbia v. Kingcome Navigation Company (1934) A.C. 45. It is reasonably clear that the province can impose quasi-criminal penalties on a vendor who fails to collect and remit tax or who fails to remit tax which he has collected. However, section 13 of the Ontario Retail Sales Tax Act provides for an assessment procedure against the vendor as well as the purchaser, which appears to imply that the vendor is in some way directly liable civilly to pay the tax, a situation which appears to be unconstitutional.

An elaborate appeal procedure is established by sections 17 to 23 providing for objection and appeal either by vendor or purchaser. These provisions being copied almost verbatim from those in The Corporations Tax Act. However, appeal procedures which would be appropriate for a corporation tax are wholly inappropriate for a tax which is levied in small amounts on consumers and collected by vendors. By providing for appeal only to the Supreme Court of Ontario, with $400 to be paid in advance as security for costs, the statute has precluded any effective appeal by consumers. Since vendors are not themselves liable for the tax, but merely collect it from their customers as agents for the Crown, it is unlikely that any vendor would ever litigate a sales tax assessment, except in respect of transactions which have been retroactively reassessed when the vendor had failed to collect tax from his customers.

Nevertheless, a simple appeal procedure is a requisite of a well drawn taxing statute. It is not easy to arrive at a useful form of appeal procedure for retail sales taxes. We believe, however, that consideration should be given to some arrangement whereby any interested party may, upon notice to the other parties to the transaction and to the Treasurer, bring the matter before a County Court Judge for determination in a summary manner with appeal on questions of law only to the Court of Appeal. Appeals on "fair value" questions could, we believe, be handled quite satisfactorily in this manner.

Limitations:

It is undesirable to leave to the discretion of the Treasurer the time within which he will reply to a Notice of Appeal under section 19 (1) of the Act. Experience under the Income Tax Act with the expression "with all due dispatch" has been entirely unsatisfactory. Even more

serious is the fact that under section 17 (3) no time limit is imposed upon the Treasurer for consideration of and reply to a Notice of Objection and it is impossible to appeal the matter to Court until 90 days have expired from the date that the Treasurer has made his decision. The taxpayer can be kept for months or even years without an effective right of appeal, a situation which is not unknown under the Corporations Tax Act.

At the present time there appears to be no limitation on the period during which an assessment may be made against a vendor for failing to collect and remit the proper amount of tax. It is suggested that, in the absence of fraud no assessment should be made after two years from the date of the transaction.

Bulk Sales:

While the general principle established in section 4 of the Act dealing with bulk sales may be unobjectionable, it is hardly reasonable to make the purchaser of stock in bulk (who may have bought only a small quantity of goods) liable for payment to the Comptroller of all sales taxes which are due by the vendor, even if such taxes are wholly unrelated to the goods which he has purchased. It would be entirely unreasonable for such a purchaser of goods in bulk to be made liable for payment of sales taxes, which might not even have been assessed against the vendor until some time after the transaction has been completed.

Solicitor-Client Privilege:

The effective administration of justice requires the preservation of the confidentiality of communications between clients and their lawyers. No provision has been inserted in the Retail Sales Tax Act similar to that contained in section 126A of the Income Tax Act, providing for a judicial review of any claim of such privilege before records can be seized in the course of an

investigation of a taxpayer's affairs. In the absence of this provision, it is not entirely clear what effective steps can be taken to assert this privilege, particularly when one notes that under Section 24 (9) it is provided that, "Notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do." It may perhaps be argued that an unintended result of this subsection may be to eliminate the law relating to solicitor's privilege.

Prosecutions:

The provisions of section 35 dealing with criminal prosecutions for failure to collect tax appear to be most unsatisfactory. Where there is a dispute as to whether goods which have been sold are in fact taxable and whether the amount of tax has been correctly computed, it is entirely undesirable that a certificate of the Comptroller should be accepted as prima facie evidence of the amount of tax that should have been collected. Whatever the merits of such certificates in civil assessment proceedings, they have no place whatever in criminal prosecutions, where the onus should at all times be upon the Crown to establish that the offence has been committed.

Section 36 provides, "In any prosection for failure to pay the tax or collect or remit the tax, the onus or proving that the tax was paid, collected or remitted, as the case may be, to the Comptroller is upon the accused." It is not clear whether this section is intended to do any more than confirm the ordinary rule of evidence that a person who alleges payment as a defence has the burden of adducing evidence of such payment. It is possible, however, that the section is intended to reverse the usual onus in criminal proceedings and, since this is unclear and since such a result would be highly undesirable, it is recommended that the section be repealed.

THE SECURITY TRANSFER TAX ACT
R.S.O. 1960, Ch. 364

1. A realistic right of appeal to the courts is needed in this statute, together with a procedure whereby a taxpayer may obtain a binding ruling in advance of a transaction, upon submission of the draft documentation.

2. The charging section in this statute - section 2 - is subject to administrative discretion in its central features, a situation which is incompatible with the basic rules for statutory interpretation (which assume a clear unvarying charging provision).

3. In particular the tax is imposed upon the "sale, transfer or assignment" of a security. Each of these words has a fairly well defined meaning in law yet the statute in section 19 (b) gives the Treasury power to pass a regulation

> "determining what constitutes a sale, transfer or assignment".

Subsection (b) of section 19 should be repealed.

4. The other central feature of the Act which is subject to the whim of the Treasury is the amount of tax payable in in any given case. The amount of tax is fixed by the statute according to the "price or valuation" at which a share is sold, transferred or assigned. The statute provides in section 3 (3) that a transfer at other than current market price will be taxed as if it had been made at current market price. It then goes on to provide in section 3 (4) that where it is difficult to ascertain the value "the Treasurer may fix a price which shall be the price on which a tax shall be paid."

This power is abused to a minor extent in practice and should be removed from the statute. A long line of judicial decisions has defined concepts such as "current market price" so that there is no practical need for section 3 (4).

5. In various situations this statute and the regulations passed thereunder require one person to collect and remit a tax which is levied upon another. In several of these cases the person who is liable to collect and remit has no necessary way of knowing that the person primarily liable ought to pay. In these circumstances the statute should confer a civil cause of action upon the collector so that he will be enabled to indemnify himself if he is compelled to pay the Treasury sums which legally he ought to have collected but did not do so, because he did not know of the obligation.

6. "Security" is defined by section 1 (b) of the statute to include the "debentures" of "any association, company, corporation or government." Both "debenture" and "association" are imprecise words capable of exceedingly wide interpretations. It is probable for example that the promissory note of a partnership is the "debenture" of an "association". In fact the Treasury has attempted to tax the sale, transfer or assignment of such notes if enough tax is involved. Both words ought to be eliminated, in favour of more exact language if necessary.

7. If this statute is to be retained, it ought to be changed into a direct tax upon professional security handlers such as the Stock Exchange (which alone collects and remits 40% of the tax) trust companies, bond dealers and banks. The remaining enormous group of small companies, commonly private companies pay collectively a large sum each year in auditing and legal fees to comply with the tax but remit a very small amount, collectively to the Treasury.

SUCCESSION DUTY ACT
R.S.O. 1960, Ch. 386 as amended

The primary submission and strong recommendation is that this statute should be suspended in application and that the field should be "rented" to the federal government under the federal-provincial tax agreement.

The reasons for this suggestion are numerous and compelling but the most important are perhaps the following:

1. The Act as it stands is extremely complex, due admittedly in part to its nature as a "succession duty" Act dictated by constitutional necessity, but also in large measure due to the "patchwork" manner in which it has been amended over a period of some twenty-five years.
2. The complexity of the Act makes it unintelligible to the layman and a challenge for most solicitors not specializing in the field. This creates extreme difficulty for the taxpayer and those advising him in connection with estate planning, a field of increasing importance.
3. The Act's complexity also creates numerous difficulties in the administration of a deceased person's estate. Such difficulties often lead to undue delay and invariably to increased administrative expense, particularly in legal fees.
4. The duplication of effort in administering the Act also leads to duplication in costs incurred by the provincial and federal governments.
5. Double taxation too often results for the resident of Ontario under the combined impact of the Ontario Succession Duty Act, the federal Estate Tax Act and foreign death tax legislation. The most common examples of double taxation which

could be corrected arise (a) where there is a transmission of property situate outside Ontario, (b) in situations where the rules of situs applicable in Ontario conflict with those applied in other jurisdictions, and (c) where property is subject to tax in a foreign jurisdiction which does not offer a credit for the duty payable in Ontario but does offer a credit for estate tax payable to the federal government. In the latter situation the foreign tax credit available to the estate of the Ontario decedent could be one-half only of the credit available to the decedent domiciled in a non-prescribed province.

It hardly need be stated that the aforesaid difficulties increased costs and double taxation consequences make it needlessly expensive for a decedent to die or possess assets in Ontario. As a result persons are encouragedto remove themselves and their estates from the Province and are so doing.

If it is felt that the above recommendation would result in too substantial a loss in revenue for the Province, it is suggested that this could be readily overcome by appropriate arrangements with the federal government in respect of the estates of persons dying domiciled in Ontario.

In the event that the foregoing recommendation is unacceptable there are various submissions to be made regarding the Act itself. It has been in existence for some twenty-five years in substantially its present form notwithstanding a vast economic and social upheaval during that period. It has perforce been amended throughout this period by a "patchwork" approach which is largely responsible for the present difficulties and complexity. It is therefore considered essential that, if a succession

duty act is to be retained at all in Ontario, the present Act should be completely revised and rewritten.

The following are a few examples of administrative problems which arise under the present Act and which might be resolved on such a revision:

1. The present forms are needlessly long and repetitive, particularly for small estates. Form IA is rarely appropriate, the facts rarely being in the knowledge of the deponent, and the Department rarely requiring it to be filed.
2. The procedure for the opening and listing of contents of safety deposit boxes is cumbersome, expensive and often slow.
3. The requirements that the "Return" be filed within three months of the date of death is archaic. The necessary information can seldom be obtained within three months and the requirement is rarely, if ever, strictly enforced. There seems to be no good reason, fiscal or administrative, to require a filing before the end of the six month period when the tax is due.
4. The present top limits for the transfer of assets without a "consent to transfer" are unrealistically low. There should be an overall upwards revision of such top limits.

A revision of the Act should also effect some major changes in principle and the following are strongly recommended:

1. A provision for tax relief in the event of quick successions should be introduced into the Act.
2. An attempt should be made to lessen the impact of double taxation. While it is appreciated that some double taxation arises through conflicting rules of situs and that the province is limited

constitutionally in its power to modify the common law in this regard, the burden of double taxation could be readily alleviated in the case of transmissions. Ontario used to have reciprocal agreements with other provinces by which Ontario gave credit against its own duty for duty levied by the province in which the property was actually situate. This credit should be allowed against federal estate tax as the federal government is standing in the place of such other provinces.

3. There should be an optional valuation date for all assets. This has been a thorny subject for some years and one of the main arguments against it is that it would extend the time of administration. It is suggested that the optional valuation date should be six months from the date of death which would provide a date when the executors were in a position to realize the assets rather than binding them to the only date on which they could not conceivably realize them. It is also argued against this submission that an optional valuation date creates a problem under the Succession Duty Act because it taxes the beneficiaries rather than the estate. The result is that where more than one beneficiary is directly involved with any asset they would all have an interest in the property and an equal right to exercise the option. This could readily be overcome by giving the option to the executor or administrator.

4. Some co-ordination on valuations as between the federal and provincial tax departments is eminently desirable and might be effected through a common appelate tribunal. Provisions

for appeal of assessments akin to those in the federal Estate Tax Act should be introduced. At present it is well nigh impossible to launch an appeal because the department is most reluctant to issue a formal statement of duty which can form the basis for an appeal.

5. A new approach to the "Dependent Allowance" and the "Individual Dependent Reduction" is required. The amendments to the Act in 1960 and 1963 were announced as attempts to bring the Act into line with the federal Estate Tax Act but, while the same figures and "phrases" were used, the results are entirely different. They added further complication to the calculation of duty. The merits of the Estate Tax Act are its simplicity both of administration and calculation and its recognition of the need of equitable tax relief for widows, "infirm" widowers and dependent children. These principles should be given effect also in the Ontario statute. One way in which this might be done is to confine the preferred class of beneficiaries to spouses, children and children-in-law, lower the rates of duty against this class and increase its basic exemption to $100,000. The rates for the collateral and stranger classes could be increased so as to offset any loss of revenue suffered through this change. It is submitted also that the exemption for benefits to a spouse and dependent children should be a true exemption as under the Estate Tax Act and not merely a deduction as with the present dependents' allowance.

In order to simplify calculation of duty it is suggested that a single revised rate be adopted for all classes of beneficiaries thereby eliminating the cumbersome necessity of additional rates and surtaxes.

6. A change is recommended in the treatment of joint property which at present is taxed to the decedent except to the extent it can be shown to have been contributed by the survivor. The application of this provision leads to curious anomalies. For example, a husband makes a transfer of real property to his wife more than five years before his death: no tax is payable. A husband puts real property at any time in the names of himself and his wife as joint tenants: it is taxable in its entirety in his estate unless it can be shown that the wife in fact contributed to its purchase. In other words, you can give away the whole but not half of your property with impunity. Again, the husband and wife buy their home in joint tenancy, the husband paying the full purchase price, and hold it until the husband dies; it is taxed in full in the husband's estate. The husband and wife buy their first home in joint tenancy with the husband paying the full purchase price but this time they sell it and buy another with the proceeds. In this case the wife contributed one-half of the purchase price of the second home which they still hold at the date of the husband's death because the sale of the first one created a severance. It is submitted that these anomalies would disappear if the common

law approach to joint ownership were followed, i.e. if joint property were taxed on the basis of beneficial interest as is presently done under the federal Estate Tax Act. Such an approach would also have a fairer and more equitable result as between taxpayers.

7. Life insurance is presently taxed on a different basis from any other property owned by the deceased. It is taxed on the basis of premiums paid and not on the basis of ownership of the policy. As a consequence the policy owner cannot effectively make a duty free gift more than five years before his death of a policy of insurance taken out by himself on his own life if he has in fact paid some premiums on it. Moreover, even if he makes a transfer of it in consideration of its cash surrender value at the time of transfer section 1 (p) (iii) of the present Act still catches part of the proceeds. In other words, this method of taxation based on premiums discriminates against this type of property. It is submitted that the basis of taxation should be ownership of the policy and that, if this basis is adopted, insurance should clearly be excluded from section 1 (p) (ii).

8. The purpose in taxing gifts inter vivos is to discourage the deceased from divesting himself of his property shortly before death in order to reduce the impact of death taxes. Both the three-year period under the federal Estate Tax Act and the five-year period under the Ontario Succession Duty Act are purely arbitrary but it is submitted that there is some virtue in consistency as far as the taxpayer subject to

both statutes is concerned and that the three-year period adequately accomplishes the aforesaid purpose.

It is also submitted that the present system of including all dispositions as property passing on the death and thereafter exempting from duty those dispositions made more than five years before the death of the deceased should be changed so that only dispositions made within the time limit need be included. This would obviate a lifelong review of the decedent's dealings with his property in an attempt to obtain the relevant information which is often not within the knowledge or recollection of any of the beneficiaries.

9. The taxation of estates of non-residents in respect of "ex-dividends" of companies with head offices in Ontario creates a burden of work and expense for both the succession duty department and the executors of such "foreign" estates completely disproportionate to the amount of the dividends involved and even more so to the amount of revenue involved. It is therefore submitted that provision should be made for the exemption from duty of all "ex-dividends" in the estate of a non-resident person when the estate of such person does not include any other property which is subject to Ontario duty. No doubt a simple affidavit by the "foreign" executor could be accepted as evidence of the facts to establish entitlement to the exemption thereby enabling the issuance of the necessary releases.

10. The restrictive provisions exempting gifts to charitable organizations are no longer

adequate and should be broadened. While the present departmental practice in allowing exemptions for such gifts is generous, it is not justified under the statute and the taxpayer, and in particular the testator planning his estate, should not have to rely on departmental discretion in this area.

THE ONTARIO COMMITTEE ON TAXATION

STAFF QUESTIONS

Submission: No. 18
Hearing Date: November 26, 1963.

Submitter: THE TAXATION SUB-SECTION OF THE ONTARIO BAR ASSOCIATION

Appeals

Page	Para	
2	2	1. The suggestion is made that "The appeal tribunal of first instance could perhaps be a County Court Judge sitting in a specially designated Court wherein taxpayers may appear without Counsel". Did the Association consider as an alternative to the County Court Judge acting in this fashion, the establishment of an Ontario Tax Appeal Board like the federal Tax Appeal Board but handling the appeals under numerous Ontario taxing statutes in a somewhat informal fashion as suggested here? (Eric Ford put forward this idea)
3	2	2. What is the reason for the Association recommending appeals from the court of first instance "to a single Judge of the Court of Appeal?" Is there not a trend away from one-man decisions -- even in Royal Commissions?
3	2	3. The Association has suggested that "An Appeal from the court of first instance should be an appeal in the true sense and not, in fact, a trial de novo." Does this not conflict with the earlier recommendation of an informal nature of procedure by the County Court Judge, even to having the appellant put forward his own case without assistance of counsel?

Returns

3	4	4. A suggestion has been made by the Association that the Capital Tax and the Place of Business Tax be abolished at least in the case of private companies or companies with small capitalization.
		(a) Is there other justification than administrative grounds for treating these companies differently?
		(b) Is there justification for the capital tax and the place of business tax at all (ability to pay is not involved, so perhaps it relates to services rendered)?
4	1	(c) If an annual charge were introduced in lieu of the other taxes, what would the basis be for establishing the charge and why should it necessarily produce revenue equal to the earlier tax revenues?
		5. Does the Association favour the application of advance rulings in general. If so, where would their use be most appropriate in the Ontario picture? Perhaps the Association might prefer to answer this later?

Assessment Act

5	2	6. The Association favours continuance of Courts of Revision in connection with the law on appointment of members of Courts of Revision, why is a member of Council tolerated or even encouraged in small municipalities when the opposite is true of larger municipalities?
5	2	The Association favours the continuance of Courts of Revision and acknowledges the criticism of being "too prone to adopt the view of the assessor".

Assessment Act (Continued)

Page	Para
5	2

It frequently happens in Courts of Revision that the first opportunity given the appellant to find out the full details of the assessment is during the hearing itself. Prior to that time, the taxpayer is only entitled to examine the tax rolls and not the working papers of the assessor making up the roll. Would the Association favour the taxpayer's right of access to the working papers of the assessor or some form of examination for discovery in advance of the first tribunal?

7. The Association has recommended reducing the number of steps in the appellate procedure by elimination of right of appeal to the Ontario Municipal Board.

5 3 Why did the Association favour eliminating the County Judge step in the appeal procedure rather than the Ontario Municipal Board step? As matters of fact would appear more likely to be involved in appeal than matters of law, would the Ontario Municipal Board not have an advantage over the county judge?

6 2 8. In dealing with the need or otherwise for uniformity of assessment, has the Association recognized other reasons why uniformity is frequently sought, such as reduction of inequities in school grants and equalization grants?

6 2 9. The Association has indicated that "if it is felt that there should be uniformity of assessment throughout the province, we believe that the present Assessment Act should be repealed and replaced by an entirely new statute."

It is not clear why the replacement by an entirely new statute is necessary. Would the Association expand on this point?

6 3 10. The Association states that "the disposition of appeals on matters of taxation is strictly a judicial function". Does the Association favour the present limitation of appeals beyond the municipal board to matters of law and jurisdiction, not fact?

6 4 11. The Association believes that some assessors ignore decisions in subsequent assessments. Does the association have any evidence as to the extent of the assessors ignoring decisions of appellant tribunals in later assessments?

7 1 12. The Association has suggested a notation attached to the assessment notice where an assessor has changed an assessment within three years of a tribunal decision. In cases of mechanical difficulties in handling this procedure, would an alternative treatment such as separate letters to the taxpayer be an acceptable alternative?

7 1 13. The Association's suggestion of a three year period could run into complications in the event of the use of the three year moving average or in the event of additions to a property that is assessed.

14. On Assessment appeals generally:

(a) Is the fourteen day period allowed for Notice of Objection to an assessment sufficient when the fourteen days commence with the returning of the roll?

(b) If the taxpayer has missed the time for objection to an assessment, for valid reason, should the refund of tax section be broadened to permit refund of tax in such case when properly heard rather than being limited to "gross or manifest error", which has a special meaning in law?

Assessment Act (Continued)

15. Neither the Courts of Revision or the Ontario Municipal Board can rule on whether a property is exempt from property tax or not. They can only rule on amount of tax. Is there any reason why they should be denied rulings on exemptions as they must read the law on other matters.

Corporations Tax Act

Page	Para	
8	2	16. It would be helpful to have some examples in paragraph 1(d) of inequities that have been caused. It might be permissible to send this along later.
8	3	17. What would be the Association's view of the use of an Ontario Tax Appeal Board as suggested by EricFord when compared with the Federal Tax Appeal Board? (see also question 1)
9	2	18. How different does the Association feel that the rules on allocation now are (examples)? Which rules of allocation would be favoured and why?

Gasoline Tax Act and Motor Vehicle Fuel Tax Act

10 11	3 and 1	19. Reference is made to the exemptions under the Motor Vehicle Fuel Tax Act and there are also exemptions under the Gasoline Tax Act. Does the Association feel that the exemptions are proper and effective?

Land Transfer Tax Act

12	2	20. It is suggested that the revised meaning of "land" as synonymous with "real property", would exclude leasehold property. Is there a special reason for this?
12	3	21. Could the Association elaborate further on the "unofficial and unauthorized rulings" and is the objection one of principle or of other reason?

Mining Tax Act

12	1	22. The Association has indicated that the Mining Tax is "in essence a royalty rather than income tax." Is this constitutional in its view?
12	1	23. (a) What is the basic justification for having a separate mining tax at all when there is a corporation income tax? (b) If there is to be such a separate tax, should it be based on mining profits or as a royalty? Which is preferable and why?
14	3	24. The Association suggests that the mining tax base "be brought into line with the provisions of the Dominion Income Tax Act", as an alternative to amending the Corporat ions Tax Act (Ontario) and to permit the whole of the mining tax to be deductible federally. The differences include among other items:

	Federal	Provincial
1. Depreciation	Capital Cost Allow.	line
2. Preproduction expenditures	allowed	not allowed or amortized only
3. 3 year exemption on each new mine	allowed	not allowed
4. Emergency Gold Mining Assistance	accrual	cash

Would not some of these changes be significant in revenues and incentives in nature, and does not the solution lie more simply in full deductability of provincial taxes at the federal level. (Regulation 701)

Assessment Act (Continued)

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25	3	27. If the liability of a purchaser in bulk for sales tax of the vendor is removed, what new safeguard to provincial revenues is appropriate?

Security Transfer Tax Act

27	5	28. Can the Association give evidence or examples of the abuse of power of "the Treasurer to fix a price . . . . on which tax shall be paid?" (Sec: 3(4))
28	3	29. Can the Association indicate at what point auditing and legal fees arise in small companies in more than a general way to establish this tax liability?

Succession Duty Act

30	1	30. What might examples be of other jurisdictions recognizing federal but not provincial death duties?
30	2	31. Is the flow of persons leaving the province to die or leave assets becoming greater, the same or less than 10 years previously in the view of the Association? Would the changes in rental to the federal government of the field do much to change the core problem opposite other governments?

32. The general pattern of the Estate Tax Act seems to be favoured in the many points made that differ with present Ontario treatment. If an Estate Tax type of Act were made constitutional by some means, then would the association favour a nearly complete parallel to the federal act or would changes from that form be desirable in Ontario? (The answer may come later or from briefs to the federal commission)

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